

**Pambor Energy Construction & Rebar, Ltd. and  
Donald J. Crossett. Case 5-CA-21632**

December 19, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by Donald J. Crossett December 3, 1990, the General Counsel of the National Labor Relations Board issued a complaint April 26, 1991,<sup>1</sup> against Pambor Energy Construction & Rebar, Ltd., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 17 the General Counsel filed a Motion for Summary Judgment. On October 28 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed by the close of business on May 10, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated August 5, notified the Respondent that unless an answer was received by August 15, a Motion for Summary Judgment would be filed. The Respondent failed to file an answer or a response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>2</sup>

<sup>1</sup> All dates are in 1991 unless otherwise indicated.

<sup>2</sup> The Regional Director issued a complaint in Case 5-CB-6734, which was subsequently consolidated with the instant case, alleging that the Union violated Sec. 8(b)(1)(A) and (2) of the Act by requesting employee Donald Crossett's termination because he was not a member of the Union and for reasons other than Crossett's failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union. The Union filed a timely answer. On October

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Maryland corporation with an office and place of business in Baltimore, Maryland, is engaged in the business of reinforcing steel construction at sites in the State of Maryland, including the Hamburg Street Bridge site in Baltimore and the Naval Intelligence Center at Suitland. During the calendar year ending December 31, 1990, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 for Whiting-Turner Contracting Company and other enterprises located within the State of Maryland. Whiting-Turner Contracting Company and the other enterprises each received, at their respective sites and facilities in Maryland during the calendar year 1990, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Maryland. During the calendar year ending December 31, 1990, the Respondent, in the course and conduct of its business operations, performed steel construction valued in excess of \$100,000 for the Department of the Navy at the Naval Intelligence Center at Suitland, Maryland. These business operations have a substantial impact on the national defense of the United States. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Association of Bridge, Structural and Ornamental Iron Workers, Local 16, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On November 28, 1990, the Respondent hired Donald J. Crossett to work at the Respondent's Hamburg Street Bridge site in Baltimore, Maryland. On the same date, the Union requested that the Respondent terminate Crossett because Crossett had refrained from joining the Union, and for reasons other than Crossett's failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union. Pursuant to the Union's request, the Respondent terminated Crossett on November 28, 1990.

28 the Board ordered that the cases be severed and that Case 5-CB-6734 be remanded to the Regional Director for further appropriate action.

By this conduct, the Respondent has encouraged its employees to join, support, or assist the Union, and has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees. Accordingly, we find that the Respondent violated Section 8(a)(3) and (1) of the Act.

#### CONCLUSIONS OF LAW

By discharging employee Donald Crossett at the Union's request because he refrained from joining the Union and for reasons other than Crossett's failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged employee Donald Crossett, we shall order it to offer him immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits he may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Pambor Energy Construction & Rebar, Ltd., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Discharging employees at the Union's request because they have refrained from joining the Union, and for reasons other than their failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Donald Crossett immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole with interest for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the discharge of Donald Crossett and notify him in writing that this has been done and that evidence of the discharge will not be used as a basis for future personnel action against him.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Baltimore, Maryland, the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge employees at the Union's request because they have refrained from

joining the Union, and for reasons other than their failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Donald Crossett immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or

other rights and privileges previously enjoyed, and WE WILL make him whole with interest for any loss of earnings and other benefits he may have suffered as a result of our discrimination against him.

WE WILL remove from our files any reference to the discharge of Donald Crossett and notify him in writing that this has been done and that evidence of the discharge will not be used as a basis for future personnel action against him.

PAMBOR ENERGY CONSTRUCTION &  
REBAR, LTD.